

PART 43

CONTRACT MODIFICATIONS

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SUBPART 43.1 - GENERAL

- 43.102 Policy.

(b)(90) See 17.74 when issuing a UCA.

- 43.103 Types of contract modifications.

(a) Bilateral.

(90) Delivery schedule extension - modifications.

(1)(i) It is the Government's express expectation that contractors will make all deliveries in accordance with contractual terms. It is, therefore, DLA's policy neither to endorse nor condone delivery extensions for the convenience of the contractor. There are times, however, (as, for example, when we deal with sole source suppliers, or when our supply position for a particular item will not permit the time and effort necessary for termination and reprocurement) when contracting officers determine that extending a delivery schedule at the contractor's request via contract modification is in the Government's best interest. At those times, they must decide on the form of consideration that is most acceptable under the circumstances. Often, the most appropriate form of consideration is a monetary adjustment to the contractual total. When this is so, the contracting officer/administrative contracting officer for items managed by DSCC, DISC, DPSC, or DSCR is strongly urged to use the following guidance. (DFSC is not included because, in general, delays in delivery of the items it manages are governed by demurrage procedures.)

(ii) For supply contracts other than for direct vendor delivery or base support, contracting officers at the centers listed above are encouraged to use the calculation provided at (2), below, when a delivery schedule has to be extended for monetary consideration due to contractor-caused delay. The result should be used as a guide in determining the amount of consideration to assess the contractor for a contractor-requested delivery extension/delay.

(2) As a consequence of the Government's cost incurrence associated with a contractor's delinquent delivery, the following formula will generally be used to determine the basis for an adequate amount of consideration for a delivery schedule extension when that schedule is extended as a result of contractor caused delay:

$$\text{Amount of consideration} = D + [R * L * V]$$

Where - D = Direct costs to the DLA component (currently \$100.00), as detailed in DLA - DORO Report entitled "Cost of Late Delivery for Post Award Consideration," May 1994 ("the Report");

R = Day/Cost ratio (the amount per day that a contractor delinquency costs the Government in indirect costs, expressed as a proportion of overall contract cost) for the particular supply center, as follows (see details in the Report):

DSCC	=0.00134
DSCC (DESC)	=0.00043
DSCR	=0.00081
DISC	=0.00060
DPSC (C&T)	=0.00017
DPSC (Med.)	=0.00029
DPSC (Sub.)	=0.00017

L = Total number of days the delivery Schedule is extended;

V = Dollar Value of the extended portion of the contract.

Step One: Multiply the total number of days the contract delivery schedule is being extended by the "Day-Cost Ratio" for the appropriate Center.

Step Two: Multiply the result from step one, above, by the contract dollar amount of the supplies being extended. This is the total variable cost component for delinquent delivery.

Step Three: Add the direct cost to the DLA Component of the delinquent delivery (the \$100 in the formula) to the result of step two. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the extension.

(3) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "current status." In such situations (and assuming demand for performance or explanation of delinquency has been made in writing to the contractor), it is preferable to leave the contract in a delinquent status than to modify it for an insignificant amount, or at no cost to the contractor. Refusing to restore the contractor to a satisfactory status in the event of its failure to make a good-faith offer of adequate consideration permits the Government to maintain a record of the delinquency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(91) Modifications for waivers and deviations are discussed at 46.407(f)(91).

SUBPART 43.2 - CHANGE ORDERS

43.201 General.

(90) The requirements of DFARS 217.74 and DLAD 17.74 shall be met when an undefinitized change order (UCO) which involves a Government directed change to the design/manufacturing drawings or specifications is issued by a DLA contracting office.